

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

APR 03 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

YONIC PENA-VALDOVINOS,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 06-75761

Agency No. A076-716-659

MEMORANDUM *

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted March 18, 2009**

Before: LEAVY, HAWKINS, and TASHIMA, Circuit Judges.

Yonic Pena-Valdovinos, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' order dismissing his appeal from an immigration judge's ("IJ") order finding Pena-Valdovinos removable and denying

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

his application under 8 U.S.C. § 1186a(c)(4)(B) for waiver of the joint-filing requirement to remove the conditions on his lawful permanent resident status. Our jurisdiction is governed by 8 U.S.C. § 1252. We review for substantial evidence the IJ's factual findings, *Moran v. Ashcroft*, 395 F.3d 1089, 1091 (9th Cir. 2005), and de novo due process claims, *Colmenar v. INS*, 210 F.3d 967, 971 (9th Cir. 2000). We deny in part and dismiss in part the petition for review.

The IJ found Pena-Valdovinos not credible based on inconsistencies regarding his ex-wife's involvement in his previous application under 8 U.S.C. § 1186a(c). Because these inconsistencies go to the heart of the matter, and Pena-Valdovinos failed to submit evidence otherwise sufficient to corroborate his claim that the marriage was entered into in good faith, substantial evidence supports the denial of Pena-Valdovinos' waiver application. *See Oropeza-Wong v. Gonzales*, 406 F.3d 1135, 1148 (9th Cir. 2005).

We reject Pena-Valdovinos' contention that the agency violated due process by depriving him of a full and fair hearing, because the proceedings were not "so fundamentally unfair that [he] was prevented from reasonably presenting his case." *Colmenar*, 210 F.3d at 971 (internal quotation marks and citation omitted).

We lack jurisdiction to review the agency's discretionary denial of voluntary departure. *See* 8 U.S.C. §§ 1229c(f), 1252(a)(2)(B)(i). Pena-Valdovinos' due

process claim regarding the denial of voluntary departure is not colorable. *See Martinez-Rosas v. Gonzales*, 424 F.3d 926, 930 (9th Cir. 2005).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.